

108TH CONGRESS  
1ST SESSION

# S. 157

To help protect the public against the threat of chemical attacks.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2003

Mr. CORZINE (for himself, Mr. JEFFORDS, Mrs. BOXER, Mrs. CLINTON, and Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To help protect the public against the threat of chemical attacks.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Chemical Security Act  
5       of 2003”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the chemical industry is a crucial part of  
9       the critical infrastructure of the United States—

10               (A) in its own right; and

1 (B) because that industry supplies re-  
2 sources essential to the functioning of other  
3 critical infrastructures;

4 (2) the possibility of terrorist and criminal at-  
5 tacks on chemical sources (such as industrial facili-  
6 ties) poses a serious threat to public health, safety,  
7 and welfare, critical infrastructure, national security,  
8 and the environment;

9 (3) the possibility of theft of dangerous chemi-  
10 cals from chemical sources for use in terrorist at-  
11 tacks poses a further threat to public health, safety,  
12 and welfare, critical infrastructure, national security,  
13 and the environment; and

14 (4) there are significant opportunities to pre-  
15 vent theft from, and criminal attack on, chemical  
16 sources and reduce the harm that such acts would  
17 produce by—

18 (A)(i) reducing usage and storage of  
19 chemicals by changing production methods and  
20 processes; and

21 (ii) employing inherently safer technologies  
22 in the manufacture, transport, and use of  
23 chemicals;

24 (B) enhancing secondary containment and  
25 other existing mitigation measures; and

1 (C) improving security.

2 **SEC. 3. DEFINITIONS.**

3 In this Act:

4 (1) ADMINISTRATOR.—The term “Adminis-  
5 trator” means the Administrator of the Environ-  
6 mental Protection Agency.

7 (2) CHEMICAL SOURCE.—The term “chemical  
8 source” means a stationary source (as defined in  
9 section 112(r)(2) of the Clean Air Act (42 U.S.C.  
10 7412(r)(2))) that contains a substance of concern.

11 (3) COVERED SUBSTANCE OF CONCERN.—The  
12 term “covered substance of concern” means a sub-  
13 stance of concern that, in combination with a chem-  
14 ical source and other factors, is designated as a high  
15 priority category by the Administrator under section  
16 4(a)(1).

17 (4) EMPLOYEE.—The term “employee”  
18 means—

19 (A) a duly recognized collective bargaining  
20 representative at a chemical source; or

21 (B) in the absence of such a representa-  
22 tive, other appropriate personnel.

23 (5) FIRST RESPONDER.—The term “first re-  
24 sponder” includes a firefighter.

1           (6) HEAD OF THE OFFICE.—The term “head of  
2       the Office” means the Secretary of Homeland Secu-  
3       rity.

4           (7) SAFER DESIGN AND MAINTENANCE.—The  
5       term “safer design and maintenance” includes, with  
6       respect to a chemical source that is within a high  
7       priority category designated under section 4(a)(1),  
8       implementation, to the extent practicable, of the  
9       practices of—

10           (A) preventing or reducing the vulner-  
11       ability of the chemical source to a release of a  
12       covered substance of concern through use of in-  
13       herently safer technology;

14           (B) reducing any vulnerability of the chem-  
15       ical source to a release of a covered substance  
16       of concern through use of well-maintained sec-  
17       ondary containment, control, or mitigation  
18       equipment;

19           (C) reducing any vulnerability of the chem-  
20       ical source to a release of a covered substance  
21       of concern by implementing security measures;  
22       and

23           (D) reducing the potential consequences of  
24       any vulnerability of the chemical source to a re-  
25       lease of a covered substance of concern through

1 the use of buffer zones between the chemical  
2 source and surrounding populations (including  
3 buffer zones between the chemical source and  
4 residences, schools, hospitals, senior centers,  
5 shopping centers and malls, sports and enter-  
6 tainment arenas, public roads and transpor-  
7 tation routes, and other population centers).

8 (8) SECURITY MEASURE.—

9 (A) IN GENERAL.—The term “security  
10 measure” means an action carried out to in-  
11 crease the security of a chemical source.

12 (B) INCLUSIONS.—The term “security  
13 measure”, with respect to a chemical source, in-  
14 cludes—

15 (i) employee training and background  
16 checks;

17 (ii) the limitation and prevention of  
18 access to controls of the chemical source;

19 (iii) protection of the perimeter of the  
20 chemical source;

21 (iv) the installation and operation of  
22 an intrusion detection sensor; and

23 (v) a measure to increase computer or  
24 computer network security.

25 (9) SUBSTANCE OF CONCERN.—

1 (A) IN GENERAL.—The term “substance of  
2 concern” means—

3 (i) any regulated substance (as de-  
4 fined in section 112(r) of the Clean Air  
5 Act (42 U.S.C. 7412(r))); and

6 (ii) any substance designated by the  
7 Administrator under section 4(a).

8 (B) EXCLUSION.—The term “substance of  
9 concern” does not include liquefied petroleum  
10 gas that is used as fuel or held for sale as fuel  
11 at a retail facility as described in section  
12 112(r)(4)(B) of the Clean Air Act (42 U.S.C.  
13 7412(r)(4)(B)).

14 (10) UNAUTHORIZED RELEASE.—The term  
15 “unauthorized release” means—

16 (A) a release from a chemical source into  
17 the environment of a covered substance of con-  
18 cern that is caused, in whole or in part, by a  
19 criminal act;

20 (B) a release into the environment of a  
21 covered substance of concern that has been re-  
22 moved from a chemical source, in whole or in  
23 part, by a criminal act; and

24 (C) a release or removal from a chemical  
25 source of a covered substance of concern that is

1           unauthorized by the owner or operator of the  
2           chemical source.

3           (11) USE OF INHERENTLY SAFER TECH-  
4           NOLOGY.—

5           (A) IN GENERAL.—The term “use of in-  
6           herently safer technology”, with respect to a  
7           chemical source, means use of a technology,  
8           product, raw material, or practice that, as com-  
9           pared with the technologies, products, raw ma-  
10          terials, or practices currently in use—

11           (i) reduces or eliminates the possi-  
12          bility of a release of a substance of concern  
13          from the chemical source prior to sec-  
14          ondary containment, control, or mitigation;  
15          and

16           (ii) reduces or eliminates the threats  
17          to public health and the environment asso-  
18          ciated with a release or potential release of  
19          a substance of concern from the chemical  
20          source.

21           (B) INCLUSIONS.—The term “use of inher-  
22          ently safer technology” includes input substi-  
23          tution, catalyst or carrier substitution, process  
24          redesign (including reuse or recycling of a sub-  
25          stance of concern), product reformulation, pro-

cedure simplification, and technology modification so as to—

(i) use less hazardous substances or benign substances;

(ii) use a smaller quantity of covered substances of concern;

(iii) reduce hazardous pressures or temperatures;

(iv) reduce the possibility and potential consequences of equipment failure and human error;

(v) improve inventory control and chemical use efficiency; and

(vi) reduce or eliminate storage, transportation, handling, disposal, and discharge of substances of concern.

**SEC. 4. DESIGNATION OF AND REQUIREMENTS FOR HIGH PRIORITY CATEGORIES.**

(a) DESIGNATION AND REGULATION OF HIGH PRIORITY CATEGORIES BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator, in consultation with the head of the Office and State and local agencies responsible for planning for and responding to unauthorized releases and providing



1 emergency health care, shall promulgate regulations  
2 to designate certain combinations of chemical  
3 sources and substances of concern as high priority  
4 categories based on the severity of the threat posed  
5 by an unauthorized release from the chemical  
6 sources.

7 (2) FACTORS TO BE CONSIDERED.—In design-  
8 nating high priority categories under paragraph (1),  
9 the Administrator, in consultation with the head of  
10 the Office, shall consider—

11 (A) the severity of the harm that could be  
12 caused by an unauthorized release;

13 (B) the proximity to population centers;

14 (C) the threats to national security;

15 (D) the threats to critical infrastructure;

16 (E) threshold quantities of substances of  
17 concern that pose a serious threat; and

18 (F) such other safety or security factors as  
19 the Administrator, in consultation with the  
20 head of the Office, determines to be appro-  
21 priate.

22 (3) REQUIREMENTS FOR HIGH PRIORITY CAT-  
23 EGORIES.—

24 (A) IN GENERAL.—Not later than 1 year  
25 after the date of enactment of this Act, the Ad-

1           ministrator, in consultation with the head of the  
2           Office, the United States Chemical Safety and  
3           Hazard Investigation Board, and State and  
4           local agencies described in paragraph (1), shall  
5           promulgate regulations to require each owner  
6           and each operator of a chemical source that is  
7           within a high priority category designated  
8           under paragraph (1), in consultation with local  
9           law enforcement, first responders, and employ-  
10          ees, to—

11                   (i) conduct an assessment of the vul-  
12                   nerability of the chemical source to a ter-  
13                   rorist attack or other unauthorized release;

14                   (ii) using appropriate hazard assess-  
15                   ment techniques, identify hazards that may  
16                   result from an unauthorized release of a  
17                   covered substance of concern; and

18                   (iii) prepare a prevention, prepared-  
19                   ness, and response plan that incorporates  
20                   the results of those vulnerability and haz-  
21                   ard assessments.

22           (B) ACTIONS AND PROCEDURES.—A pre-  
23           vention, preparedness, and response plan re-  
24           quired under subparagraph (A)(iii) shall include  
25           actions and procedures, including safer design

1 and maintenance of the chemical source, to  
2 eliminate or significantly lessen the potential  
3 consequences of an unauthorized release of a  
4 covered substance of concern.

5 (C) THREAT INFORMATION.—To the max-  
6 imum extent permitted by applicable authorities  
7 and the interests of national security, the head  
8 of the Office, in consultation with the Adminis-  
9 trator, shall provide owners and operators of  
10 chemical sources with threat information rel-  
11 evant to the assessments and plans required  
12 under subsection (b).

13 (4) REVIEW AND REVISIONS.—Not later than 5  
14 years after the date of promulgation of regulations  
15 under each of paragraphs (1) and (3), the Adminis-  
16 trator, in consultation with the head of the Office,  
17 shall review the regulations and make any necessary  
18 revisions.

19 (5) ADDITION OF SUBSTANCES OF CONCERN.—  
20 For the purpose of designating high priority cat-  
21 egories under paragraph (1) or any subsequent revi-  
22 sion of the regulations promulgated under paragraph  
23 (1), the Administrator, in consultation with the head  
24 of the Office, may designate additional substances  
25 that pose a serious threat as substances of concern.

1 (b) CERTIFICATION.—

2 (1) VULNERABILITY AND HAZARD ASSESS-  
3 MENTS.—Not later than 1 year after the date of  
4 promulgation of regulations under subsection (a)(3),  
5 each owner and each operator of a chemical source  
6 that is within a high priority category designated  
7 under subsection (a)(1) shall—

8 (A) certify to the Administrator that the  
9 chemical source has conducted assessments in  
10 accordance with the regulations; and

11 (B) submit to the Administrator written  
12 copies of the assessments.

13 (2) PREVENTION, PREPAREDNESS, AND RE-  
14 SPONSE PLANS.—Not later than 18 months after the  
15 date of promulgation of regulations under subsection  
16 (a)(3), the owner or operator shall—

17 (A) certify to the Administrator that the  
18 chemical source has completed a prevention,  
19 preparedness, and response plan that incor-  
20 porates the results of the assessments and com-  
21 plies with the regulations; and

22 (B) submit to the Administrator a written  
23 copy of the plan.

24 (3) 5-YEAR REVIEW.—Not later than 5 years  
25 after each of the date of submission of a copy of an

1 assessment under paragraph (1) and a plan under  
2 paragraph (2), and not less often than every 3 years  
3 thereafter, the owner or operator of the chemical  
4 source covered by the assessment or plan, in coordi-  
5 nation with local law enforcement and first respond-  
6 ers, shall—

7 (A) review the adequacy of the assessment  
8 or plan, as the case may be; and

9 (B)(i) certify to the Administrator that the  
10 chemical source has completed the review; and

11 (ii) as appropriate, submit to the Adminis-  
12 trator any changes to the assessment or plan.

13 (4) PROTECTION OF INFORMATION.—

14 (A) DISCLOSURE EXEMPTION.—Except  
15 with respect to certifications specified in para-  
16 graphs (1) through (3) of this subsection and  
17 section 5(a), all information provided to the Ad-  
18 ministrator under this subsection, and all infor-  
19 mation derived from that information, shall be  
20 exempt from disclosure under section 552 of  
21 title 5, United States Code.

22 (B) DEVELOPMENT OF PROTOCOLS.—

23 (i) IN GENERAL.—The Administrator,  
24 in consultation with the head of the Office,  
25 shall develop such protocols as are nec-

1           essary to protect the copies of the assess-  
2           ments and plans required to be submitted  
3           under this subsection (including the infor-  
4           mation contained in those assessments and  
5           plans) from unauthorized disclosure.

6           (ii) REQUIREMENTS.—The protocols  
7           developed under clause (i) shall ensure  
8           that—

9                   (I) each copy of an assessment or  
10                  plan, and all information contained in  
11                  or derived from the assessment or  
12                  plan, is maintained in a secure loca-  
13                  tion;

14                  (II) except as provided in sub-  
15                  paragraph (C), only individuals des-  
16                  ignated by the Administrator may  
17                  have access to the copies of the as-  
18                  sessments and plans; and

19                  (III) no copy of an assessment or  
20                  plan or any portion of an assessment  
21                  or plan, and no information contained  
22                  in or derived from an assessment or  
23                  plan, shall be available to any person  
24                  other than an individual designated by  
25                  the Administrator.

1 (iii) DEADLINE.—As soon as prac-  
2 ticable, but not later than 1 year after the  
3 date of enactment of this Act, the Admin-  
4 istrator shall complete the development of  
5 protocols under clause (i) so as to ensure  
6 that the protocols are in place before the  
7 date on which the Administrator receives  
8 any assessment or plan under this sub-  
9 section.

10 (C) FEDERAL OFFICERS AND EMPLOY-  
11 EES.—An individual referred to in subpara-  
12 graph (B)(ii) who is an officer or employee of  
13 the United States may discuss with a State or  
14 local official the contents of an assessment or  
15 plan described in that subparagraph.

16 **SEC. 5. ENFORCEMENT.**

17 (a) REVIEW OF PLANS.—

18 (1) IN GENERAL.—The Administrator, in con-  
19 sultation with the head of the Office, shall review  
20 each assessment and plan submitted under section  
21 4(b) to determine the compliance of the chemical  
22 source covered by the assessment or plan with regu-  
23 lations promulgated under paragraphs (1) and (3) of  
24 section 4(a).

25 (2) CERTIFICATION OF COMPLIANCE.—

1 (A) IN GENERAL.—The Administrator  
2 shall certify in writing each determination of  
3 the Administrator under paragraph (1).

4 (B) INCLUSIONS.—A certification of the  
5 Administrator shall include a checklist indi-  
6 cating consideration by a chemical source of the  
7 use of 4 elements of safer design and mainte-  
8 nance described in subparagraphs (A) through  
9 (D) of section 3(6).

10 (C) EARLY COMPLIANCE.—

11 (i) IN GENERAL.—The Administrator,  
12 in consultation with the head of the Office,  
13 shall—

14 (I) before the date of publication  
15 of proposed regulations under section  
16 4(a)(3), review each assessment or  
17 plan submitted to the Administrator  
18 under section 4(b); and

19 (II) before the date of promulga-  
20 tion of final regulations under section  
21 4(a)(3), determine whether each such  
22 assessment or plan meets the con-  
23 sultation, planning, and assessment  
24 requirements applicable to high pri-  
25 ority categories under section 4(a)(3).



1 (ii) AFFIRMATIVE DETERMINATION.—

2 If the Administrator, in consultation with  
 3 the head of the Office, makes an affirma-  
 4 tive determination under clause (i)(II), the  
 5 Administrator shall certify compliance of  
 6 an assessment or plan described in that  
 7 clause without requiring any revision of the  
 8 assessment or plan.

9 (D) SCHEDULE FOR REVIEW AND CERTIFI-  
 10 CATION.—

11 (i) IN GENERAL.—The Administrator,  
 12 after taking into consideration the factors  
 13 described in section 4(a)(2), shall establish  
 14 a schedule for the review and certification  
 15 of assessments and plans submitted under  
 16 section 4(b).

17 (ii) DEADLINE FOR COMPLETION.—  
 18 Not later than 3 years after the deadlines  
 19 for the submission of assessments and  
 20 plans under paragraph (1) or (2), respec-  
 21 tively, of section 4(b), the Administrator  
 22 shall complete the review and certification  
 23 of all assessments and plans submitted  
 24 under those sections.

25 (b) COMPLIANCE ASSISTANCE.—

1           (1) DEFINITION OF DETERMINATION.—In this  
 2 subsection, the term “determination” means a deter-  
 3 mination by the Administrator that, with respect to  
 4 an assessment or plan described in section 4(b)—

5                   (A) the assessment or plan does not com-  
 6 ply with regulations promulgated under para-  
 7 graphs (1) and (3) of section 4(a); or

8                   (B)(i) a threat exists beyond the scope of  
 9 the submitted plan; or

10                   (ii) current implementation of the plan is  
 11 insufficient to address—

12                           (I) the results of an assessment of a  
 13 source; or

14                           (II) a threat described in clause (i).

15           (2) DETERMINATION BY ADMINISTRATOR.—If  
 16 the Administrator, after consultation with the head  
 17 of the Office, makes a determination, the Adminis-  
 18 trator shall—

19                   (A) notify the chemical source of the deter-  
 20 mination; and

21                   (B) provide such advice and technical as-  
 22 sistance, in coordination with the head of the  
 23 Office and the United States Chemical Safety  
 24 and Hazard Investigation Board, as is appro-  
 25 priate—

- 1 (i) to bring the assessment or plan of  
 2 a chemical source described in section 4(b)  
 3 into compliance; or  
 4 (ii) to address any threat described in  
 5 clause (i) or (ii) of paragraph (1)(B).

6 (c) COMPLIANCE ORDERS.—

7 (1) IN GENERAL.—If, after the date that is 30  
 8 days after the later of the date on which the Admin-  
 9 istrator first provides assistance, or a chemical  
 10 source receives notice, under subsection (b)(2)(B), a  
 11 chemical source has not brought an assessment or  
 12 plan for which the assistance is provided into com-  
 13 pliance with regulations promulgated under para-  
 14 graphs (1) and (3) of section 4(a), or the chemical  
 15 source has not complied with an entry or informa-  
 16 tion request under section 6, the Administrator may  
 17 issue an order directing compliance by the chemical  
 18 source.

19 (2) NOTICE AND OPPORTUNITY FOR HEAR-  
 20 ING.—An order under paragraph (1) may be issued  
 21 only after notice and opportunity for a hearing.

22 (d) ABATEMENT ACTION.—

23 (1) IN GENERAL.—Notwithstanding a certifi-  
 24 cation under section 5(a)(2), if the head of the Of-  
 25 fice, in consultation with local law enforcement offi-

1 cials and first responders, determines that a threat  
2 of a terrorist attack exists that is beyond the scope  
3 of a submitted prevention, preparedness, and re-  
4 sponse plan of 1 or more chemical sources, or cur-  
5 rent implementation of the plan is insufficient to ad-  
6 dress the results of an assessment of a source or a  
7 threat described in subsection (b)(1)(B)(i), the head  
8 of the Office shall notify each chemical source of the  
9 elevated threat.

10 (2) INSUFFICIENT RESPONSE.—If the head of  
11 the Office determines that a chemical source has not  
12 taken appropriate action in response to a notifica-  
13 tion under paragraph (1), the head of the Office  
14 shall notify the chemical source, the Administrator,  
15 and the Attorney General that actions taken by the  
16 chemical source in response to the notification are  
17 insufficient.

18 (3) RELIEF.—

19 (A) IN GENERAL.—On receipt of a notifi-  
20 cation under paragraph (2), the Administrator  
21 or the Attorney General may secure such relief  
22 as is necessary to abate a threat described in  
23 paragraph (1), including such orders as are  
24 necessary to protect public health or welfare.

1                   (B) JURISDICTION.—The district court of  
2                   the United States for the district in which a  
3                   threat described in paragraph (1) occurs shall  
4                   have jurisdiction to grant such relief as the Ad-  
5                   ministrator or Attorney General requests under  
6                   subparagraph (A).

7   **SEC. 6. RECORDKEEPING AND ENTRY.**

8           (a) RECORDS MAINTENANCE.—A chemical source  
9           that is required to certify to the Administrator assess-  
10          ments and plans under section 4 shall maintain on the  
11          premises of the chemical source a current copy of those  
12          assessments and plans.

13          (b) RIGHT OF ENTRY.—In carrying out this Act, the  
14          Administrator (or an authorized representative of the Ad-  
15          ministrator), on presentation of credentials—

16               (1) shall have a right of entry to, on, or  
17               through any premises of an owner or operator of a  
18               chemical source described in subsection (a) or any  
19               premises in which any records required to be main-  
20               tained under subsection (a) are located; and

21               (2) may at reasonable times have access to, and  
22               may copy, any records, reports, or other information  
23               described in subsection (a).

1 (c) INFORMATION REQUESTS.—In carrying out this  
2 Act, the Administrator may require any chemical source  
3 to provide such information as is necessary to—

4 (1) enforce this Act; and

5 (2) promulgate or enforce regulations under  
6 this Act.

7 **SEC. 7. PENALTIES.**

8 (a) CIVIL PENALTIES.—Any owner or operator of a  
9 chemical source that violates, or fails to comply with, any  
10 order issued may, in an action brought in United States  
11 district court, be subject to a civil penalty of not more  
12 than \$25,000 for each day in which such violation occurs  
13 or such failure to comply continues.

14 (b) CRIMINAL PENALTIES.—Any owner or operator  
15 of a chemical source that knowingly violates, or fails to  
16 comply with, any order issued shall—

17 (1) in the case of a first violation or failure to  
18 comply, be fined not less than \$2,500 nor more than  
19 \$25,000 per day of violation, imprisoned not more  
20 than 1 year, or both; and

21 (2) in the case of a subsequent violation or fail-  
22 ure to comply, be fined not more than \$50,000 per  
23 day of violation, imprisoned not more than 2 years,  
24 or both.

25 (c) ADMINISTRATIVE PENALTIES.—

1           (1) PENALTY ORDERS.—If the amount of a civil  
 2           penalty determined under subsection (a) does not ex-  
 3           ceed \$125,000, the penalty may be assessed in an  
 4           order issued by the Administrator.

5           (2) NOTICE AND HEARING.—Before issuing an  
 6           order described in paragraph (1), the Administrator  
 7           shall provide to the person against which the penalty  
 8           is to be assessed—

9                   (A) written notice of the proposed order;  
 10                  and

11                   (B) the opportunity to request, not later  
 12                  than 30 days after the date on which the notice  
 13                  is received by the person, a hearing on the pro-  
 14                  posed order.

15 **SEC. 8. NO EFFECT ON REQUIREMENTS UNDER OTHER**  
 16 **LAW.**

17           Nothing in this Act affects any duty or other require-  
 18           ment imposed under any other Federal or State law.

19 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

20           There are authorized to be appropriated such sums  
 21           as are necessary to carry out this Act.

○